REMARKS:

Status of the Claims

Claims 1-37 were originally filed. Claims 4-10, 27, 28, 32, 36, and 37 were withdrawn in the December 17, 2008 Amendment in response to the October 17, 2008 Restriction Requirement. Accordingly, upon entry of this Amendment, claims 1-3, 11-26, 29-31, and 33-35 will be pending. Applicants respectfully request reconsideration and withdrawal of rejection in view of the following remarks.

Election/Restrictions

Examiner acknowledges Applicants' election of Group I, Species A on December 17, 2008 (*See*, Office Action, page 2). In this Amendment, claims 4-10, 27, 28, 32, 36, and 37 are further canceled, without traverse. Applicants reserve the right to file the canceled claims in a divisional application at a later time.

Claim Rejections Under 35 U.S.C. § 103

1. Claims 1-3, 11, 14, 15, 18, 22, 23, 26, 29-31, and 33-35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Heibel *et al.* (US Pub. No. 2003/0045447) in view of Newell (US Pat. No. 4,374,125) and Schilling (GB Pat. No. 1,561,389) (*See*, Office Action, page 3).

Examiner alleges that Heibel *et al.* teach a composition containing an emulsifier (*See*, Office Action, page 4, line 10). While the amount of the emulsifier is not taught, it is common practice in the art to optimize such result effective variables to render the most stable emulsion (*See*, Office Action, page 3, lines 18-22).

Applicants respectfully submit that Heibel *et al.* neither teach nor suggest the claimed limitation of an emulsifier in the liquid-phase, which functions as a suspending agent to suspend the fragrance in the liquid-phase. In fact, Heibel *et al.* explicitly teach away a suspending agent such as an emulsifier in either the free or the encapsulated fragrance oil (*See*, Heibel *et al.*, paragraphs [0044] and [0045]). Heibel *et al.* explicitly require the absence of any suspending agent. A modification by including an emulsifier in the liquid-phase would contradict the principle of operation of the Heibel teaching. Thus, the Heibel *et al.* disclosure is not sufficient

to render the claimed invention obvious (*See*, *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)).

Further, Applicants respectfully submit that the Examiner's allegation of Heibel's emulsifier-containing composition is misplaced (*See*, Office Action, page 4, line10). Heibel *et al.* expressly disclose an emulsifier. However, the Heibel emulsifier is NOT applied in the liquid-phase, but ONLY in the micro encapsulation (*See*, Heibel *et al.*, paragraph [0037]).

In view of the foregoing, Heibel *et al.* do not teach all the claimed limitations and a modification of Heibel *et al.* with the present invention would change the principle of operation. Accordingly, it is respectfully submitted that currently pending claims 1-3, 11, 14, 15, 18, 22, 23, 26, 29-31, and 33-35 are patentable over Heibel *et al.* alone or in combination with further references of Newell and Schilling.

2. Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Heibel *et al.* in view of Newell and Schilling, and further in view of Hoshi *et al.* (GB Pub. No. 2,062,570) (*See*, Office Action, page 6);

claims 13, 16, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Heibel *et al.* in view of Newell and Schilling, and further in view of Soper *et al.* (US Pat. No. 6,106,875) (*See*, Office Action, page 7);

claims 19-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Heibel *et al.* in view of Newell and Schilling, and further in view of Popplewell *et al.* (US Pub. No. 2005/0112152) (*See*, Office Action, page 8);

claim 24 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Heibel *et al.* in view of Newell and Schilling, and further in view of Boeckh *et al.* (US Pub. No. 2003/0171246) (*See*, Office Action, page 9); and

claim 25 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Heibel *et al.* in view of Newell and Schilling, and further in view of Yamato *et al.* (US Pat. No. 5,232,769) (*See*, Office Action, page 10).

Claims 12, 13, 16, 17, 19-21, 24, and 25 depend, directly or indirectly, from claim 1. A claim that "depends from a prior claim" incorporates all the limitations of the prior claim (*See*, 35 U.S.C. 112, 4th paragraph). When an independent claim is patentable over the prior art, its dependent claim should be deemed patentable as it incorporates all the limitations of the independent claim and further limits the independent claim. Since independent claim 1 is believed to be patentable over Heibel *et al.* alone or in combination with further references for the reasons set forth above, claims 12, 13, 16, 17, 19-21, 24, and 25 are believed to be patentable over Heibel *et al.* alone or in combination with further references by virtue of their dependency from claim 1. Applicants respectfully request that this 35 U.S.C. § 103 rejection be withdrawn.

CONCLUSION:

In view of the foregoing, Applicants respectfully request reconsideration, withdrawal of rejections, and allowance of all claims now present in the application.

The Commissioner is authorized to charge any required fees, including any extension and/or excess claim fees, any additional fees, or credit any overpayment to the Deposit Account No. 12-1295.

Respectfully submitted,

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